



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10730197

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a research scientist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner claimed in his initial cover letter that “[a]s a Research Scientist, [he] work[s] for the [REDACTED].”¹ Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled the following three criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Although the record shows that the Petitioner meets the scholarly articles criterion, for the reasons discussed below, we do not concur with the Director’s decision relating to the awards and published material criteria.²

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Director concluded that the Petitioner satisfied this criterion. In order to fulfill this criterion, a petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.³ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any

¹ However, according to his Form G-325A, Biographic Information, the Petitioner listed his current employment as an [REDACTED] for [REDACTED] since August 2016.

² Although the Petitioner references attachments in his brief, the record does not reflect that he submitted any exhibits or documentation accompanying his brief.

³ *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

limitations on competitors.⁴ The Petitioner claimed eligibility for this criterion based on receiving [redacted] of the Year – 2016” and [redacted] of Russia” from the All-Russian competition. Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the Director’s determination for this criterion.

The record reflects that the Petitioner provided a letter from [redacted], president of the [redacted] [redacted] screenshots from *Wikipedia*, and a screenshot from aviationunion.org that described the history, competition requirements, and selection criteria. For instance, the screenshot from aviationunion.org indicated:

[redacted] of the year” is an annual competition to identify the best [redacted] to promote their employment, achievements and experience as the best [redacted] of the Russian Federation. The event has been held since 2000. Its organizers are the [redacted] [redacted], the international [redacted] [redacted] named after [redacted] and the interregional social fund to facilitate Scientific and technological progress. The competition is held in two stages in 43 categories, each of which is sub-divided into [redacted]” (under 30 years of age) and [redacted] (participants with experience in [redacted] positions of not less than 5 years). The winners are awarded with diplomas, commemoratives [redacted] as well as certificates and signs [redacted] of Russia.”

Although the evidence focuses on the competition, the Petitioner did not establish that the [redacted] of the Year – 2016” and [redacted] of Russia” awards are nationally or internationally recognized for excellence in the field. Moreover, the documentation does not indicate the status, standing, or reputation of the awards in the field. Further, the Petitioner did not show the recognition of the awards beyond the organizers of the competition, such as widespread reporting and coverage from publications or other media in the field. Here, the Petitioner did not demonstrate the significance of the awards in the field.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion, and we withdraw the Director’s decision for this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claims eligibility for this criterion based on memberships with the [redacted] [redacted] and the International Academy of Technological Sciences (IATS). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being

⁴ *Id.*

judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁵

Regarding [] the Petitioner submitted a letter from [], chief scientific secretary, who attached a document entitled “Reference,” indicating that “[m]embers of the Academy are selected by the Competition Council for outstanding achievements in science and development with high scientific and technical value.” The Petitioner, however, did not supplement the record with corroborating evidence, such as the official bylaws or other membership requirements, nor did [] provide or reference the source for the information. Furthermore, although the evidence reflects that selection to [] is judged by the Competition Council and “[t]he decision is made by simple majority by open vote,” the documentation does not show the composition of the Competition Council. Here, the Petitioner did not demonstrate that the Competition Council involves recognized national or international experts in their disciplines or fields as required by this criterion.

Similarly, as it relates to IATS, the Petitioner presented a letter from [] [] of IATS, who stated that “[m]embers of the Academy are Russian and foreign scientists who are major experts in the field of new high technologies that were elected for outstanding achievements in the field of basic and applied technological sciences.” Again, the Petitioner did not support the record with corroborating bylaws or other membership documentation, nor did [] include the sources for his statement.⁶ Moreover, while [] claimed that “[a]dmission to the Academy is carried out on the basis of a personal statement by the decision of the Academy Presidium, adopted by a simple majority of Presidium members who are present at the meeting, by open vote,” the letter does not show that Presidium members are recognized national or international experts in their disciplines or fields.

Accordingly, the Petitioner did not establish that he fulfills this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Director determined that the Petitioner satisfied this criterion. In order to meet this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁷ Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we will withdraw the decision of the Director for this criterion.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

⁶ The record reflects that the Petitioner also submitted screenshots from *Wikipedia* regarding the founding and history of IATS; however, the screenshots do not reveal the membership or judging requirements of IATS.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

The record reflects that the Petitioner claimed eligibility for this criterion based on an article from *Thermal Power and HPU* and two articles from *Sel'skaia Zhizn (Rural Life)*.⁸ However, the Petitioner did not demonstrate that any of the articles show published material about him relating to his work. Rather, the articles discuss agricultural issues with the Petitioner's name briefly mentioned one time as developing new technology. For example, regarding the *Thermal Power and HPU* article, it discusses heat supply accidents, the need to improve the reliability of power supplies, and possible new technology. While the Petitioner is referenced one time as being credited for developing a new approach, the article does not discuss him, nor is it about him consistent with this regulatory criterion. Likewise, the articles from *Rural Life* report on agricultural life, equipment, and production with the Petitioner's name indicated once in crediting him for creating a new concept. Here, the Petitioner did not establish that the articles represent published material about him relating to his work as required by this regulatory criterion. Articles that are not about an alien do not fulfill this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

In addition, although he demonstrated that *Thermal Power and HPU* qualifies as a professional publication, the Petitioner did not establish that *Rural Life* classifies as a professional or major trade publication or other major medium. Specifically, the Petitioner presented a letter from [REDACTED] [REDACTED] who indicated that the newspaper is a "social, political, and agrarian newspaper," "covers a wide range of issues of rural life, social, cultural and economic life of the Russian farmers," and has a circulation of "48 thousand copies." However, the Petitioner did not offer any independent, objective evidence to support the letter's claims. USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium). Moreover, the Petitioner did not show that the intended audience is intended for professionals, nor did he demonstrate the significance of the claimed circulation figures for status as a major trade publication or other major medium.⁹

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies this criterion, and we withdraw the Director's decision for this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria.¹⁰ As a result, we need not provide the type of

⁸ In response to the Director's request for evidence (RFE), the Petitioner claimed that he submitted "Pages 1 and 7 from Heat Energetics, [REDACTED]" However, the record does not support his assertion that "Heat Energetics" published an article about him. In fact, the translation of the *Thermal Power and HPU* article contains the heading "Heat Energetics" and has the same volume, number, and date referenced by the Petitioner.

⁹ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

¹⁰ The Petitioner initially claimed eligibility for the original contributions criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v). However, in response to the Director's RFE, the Petitioner did not address this criterion or offer additional documentation. Moreover, the Petitioner does not contest this criterion on appeal. Accordingly, we consider

final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has conducted research and published his work, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

this issue to be abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).